

Loan & Order: States Object to 'Payday' Lawsuit Lending

By

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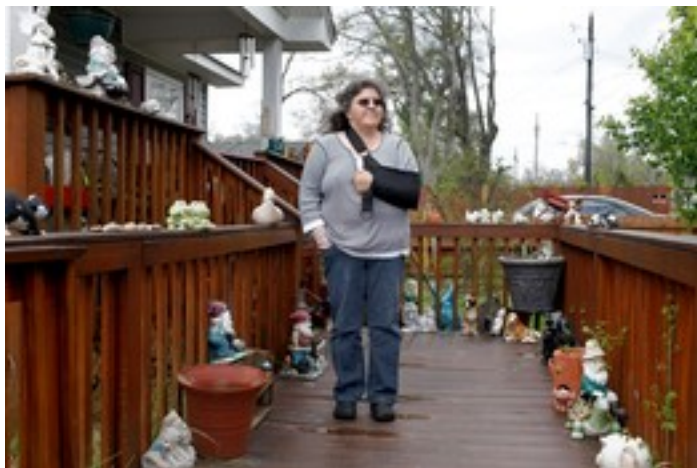
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The legal equivalent of the payday loan is coming under political pressure.

Lawmakers in a number of states are debating whether to put new limits on the burgeoning business of lending money to people involved in lawsuits and collecting when the suits pay out.

Their target isn't the growing industry of making six-figure loans to corporations facing litigation. It is the business of giving money to private individuals often suing over an injury.

Lawsuit-lending outfits like Cash4Cases Inc., LawCash and Atlas Legal Funding bill themselves as lifelines, providing money to down-and-out plaintiffs while their lawsuits move forward. Their business, supporters argue, gives plaintiffs a chance to stay in a lawsuit long enough to get a just result.



Sharon Smallwood is borrowing money while her injury in a car accident last October is being litigated. *Josh Anderson for The Wall Street Journal*

But critics argue that the loans—often in the low four figures—encourage unnecessary litigation that bottles up the legal system. They also say that fees amounting to as much as 100% a year are unfair to borrowers.

At the heart of many of the bills are proposals to subject the lawsuit-funding industry to existing state laws that regulate the interest rates banks and other lenders can charge.

"The interest rates are ridiculous," said Louisiana Sen. Dan Claitor, a Republican and the sponsor of a state bill that would provide caps of between 21% and 36% a year, depending on the amount of the loan. "You have \$3,000 loans that turn into \$15,000 obligations," he said.

Companies that make the loans defend the high charges, saying they're needed to cover the risk of not being paid back at all if cases go against the borrowers.

Plaintiffs typically offer up no collateral, and if they fail to recover anything in the lawsuit, they don't have to pay the money back.

"These aren't loans," said Eric Schuller, a spokesman for Oasis Legal Finance LLC, a litigation funder based in Northbrook, Ill. "They're fundings in which we bear all the risk."

The first lawsuit financiers started springing up about 15 years ago, according to Kelly Gilroy, the executive director of the American Legal Finance Association, an industry trade group. Since then, the industry has grown steadily—ALFA itself represents 35 members—run largely by a mix of former lawyers, bankers and other entrepreneurs, said Ms. Gilroy.

Financial data on the industry's growth is hard to come by because the companies are mostly private and loath to divulge their numbers. But Oklahoma, Texas, Rhode Island, Louisiana, North Carolina and a handful of other states are considering bills that would limit the practice.

"The consumer-lawsuit-lending industry encourages behavior that runs counter to what our legal system should be about," said Harold Kim, executive vice president at the U.S. Chamber of Commerce's Institute of Legal Reform, which is spearheading the lobbying effort on behalf of business.

The funders "prolong litigation, inflate settlement values, and add a lot of waste to our legal system," Mr. Kim added.

Other critics, which include an unusual blend of business interests as well as some plaintiffs' lawyers, complain that these loans make garden-variety lawsuits involving, say, an injured shoulder or ankle unpredictable and drawn out.

They say the loans encourage plaintiffs either to jump at early lowball settlement offers or to rebuff better offers down the road that would mostly be offset by what's owed to the funder. Plaintiffs in this situation will push cases to trial, often against the advice of their lawyers, in the hope of winning far more than they have to pay back.

"If the litigation goes on for any protracted period of time, there's a good chance your client isn't going to see any money at all," said Anthony Leone, a plaintiffs' lawyer in Warwick, R.I., and president of the state's trial-lawyer bar, the Rhode Island Association for Justice. "Every other type of loan is regulated, and these should be, too."

Representatives for the litigation-financing industry say they aren't funding litigation per se, but merely giving individuals who might be injured and unable to work some money for basic living necessities, such as groceries and the rent, while their lawsuits play out.

"These arrangements can be a godsend for someone who can't afford food or is trying to avoid eviction," said Noble McIntyre, a personal-injury lawyer in Oklahoma City. "They can actually give someone a shot at what they deserve."

Sharon Smallwood, a 49-year-old former EMT and firefighter, suffered injuries last October in a car accident that required three surgeries. After the medical bills piled up, Ms. Smallwood and her husband turned to Oasis for financial help while her lawsuit was pending. The couple got about \$6,300 from Oasis, according to Ms. Smallwood, which they've used "just to help ends meet."

Ms. Smallwood, who lives in Lebanon, Tenn., said she didn't know the exact interest rates on her loans, but that she understood the basic structure of the deal. "Oasis and my lawyer explained everything to me," she said. "So far, it's been a huge help. You just can't imagine."

Supporters of the practice also say that capping the interest rates funders can charge would cripple the industry. And they argue that existing laws that limit interest rates were written to apply to commonplace loans provided by banks and credit-card companies, not the financings they provide.

"The laws weren't designed for these types of transactions," said Mr. Schuller. "These are not loans, this is not credit. There's no obligation to pay anything back."

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